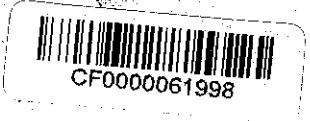


On A = 99/99

D13 (en) 2

APPEAL OF PRISONER



No. 645/98 Name टेकरा नगेसिया
Father's name करमा नगेसिया
Residence साठ सीतारामपुर (गवर्लेटा) थाना बलरामपुर Age 31 वर्ष
Sentenced आजीवन कारावास On 13-11-98
Under section S-T-H-93/98 by MR आनंद मोहन गण
आमा 302 ग्रा-6 वि-प्रथम उपरु सत ग्याफा

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1. Date of Application for copy of Judgement 13-11-98
- 2. Date of which copy received 13-11-98
- 3. Date on which appeal sent 14/11/98
- 4. Whether the prisoner wished to be represented or not-Yes/No.

No. 645/98 Name टेकरा सा करमा नगेसिया
Continued in डिला Jail डाबिबकापुर
No. 4730 Dated 14/11/98 199

Forward to the CHIEF JUDICIAL MAGISTRATE Chakrapur Surguja
to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

सहायक निरीक्षक पति लिपी 4 (चार फले)
Superintendent डाबिबकापुर जेल Jail

Date of receipt in C.J.M's Office 17-11-98
Date of receipt record to accompany 9-12-98
Memo of Appeal of the Appellate Court डचर/आपलप नं०५० (जबलपूर)
No. 9 Dated 9 199 12-98
Forwarded to the डचर आपलप नं०५० (जबलपूर)

C.J. Magistrate
Date of receipt in Appellate Court 9/12/98
//SURGUJA TY.//

with in time

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक

Criminal Appeal No. 99/99
सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH</u> <u>HON'BLE MR. L.C. BHADOO &</u> <u>HON'BLE MR. V.K. SHRIVASTAVA, JJ.</u> <u>27.10.2006</u> Mrs. Kiran Jain, Advocate for the appellant. Mr. Dinesh Chand Pandey, Panel Lawyer for the State/respondent. Oral judgment dictated on <i>Dais</i>. <u>PER L.C. BHADOO, J.</u> This appeal is directed against the judgment of conviction and order of sentence dated 13th November, 1998 passed by the 1st Additional Sessions Judge, Ambikapur in S.T. No.93/98 whereby the Additional Sessions Judge after holding the accused/appellant guilty for committing murder of his wife namely Rijnhi Bai, convicted him under Section 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for life. The case of the prosecution, in brief, was that PW-2 Mehanguaram gave Merg Intimation (Ex.P-10) in the Police Station Balrampur to the effect that in the night of 21.1.1998 he was sleeping in his threshing field, at about 5.00 a.m. in the morning Tekra Nageshia came to him and said that whether you are sleeping, then he replied that he is not	

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	sleeping, on which Tekra Nageshia said that he has murdered his wife and at that time Tekra Nageshia was carrying his daughter in the lap. Thereafter, Tekra Nageshia left the place saying that he is going. He informed Sukhram & Gauraram about the incident. On receiving mereg intimation, the Station House Officer, Police Station Balrampur registered the F.I.R. (Ex.P-9), left for the scene of occurrence and after giving notice (Ex.P-1) to the Panchas prepared the inquest report (Ex.P-2) of the body of Rijnhi Bai. The Investigating Officer prepared the site plan (Ex.P-3) of the place of occurrence. Patwari Shri Khemraj Singh (PW-7) also prepared the site plan (Ex.P-4) of the place of occurrence. One wooden plank fixed with iron pick-axe, plain soil & blood stained soil, one Dhoti stained with blood, one steel tumbler and one steel thali were taken into possession from the house of accused under Ex.P-5. Body of Rijnhi Bai was sent for postmortem examination to the Government Hospital, Balrampur under Ex.P-6 where Dr. N.K. Dutta (PW-4) conducted postmortem and prepared the postmortem report Ex.P-7 in which he opined that the death of Rijnhi Bai was due to shock and coma as a result of multiple injuries to vital organ, lungs, brain and fracture of skull & ribs leading to severe haemorrhage and death was homicidal in nature. Recovered articles were sent for chemical examination to	

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Forensic Science Laboratory, Sagar under Ex.P-11, from where report Ex.P-12 was received. After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Ramanujganj, who, in turn, committed the case to learned Sessions Judge, Ambikapur from where learned 1st Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused examined 9 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing learned counsel for the parties and perusal of the record convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment. We have heard learned counsel for the parties. Learned counsel for the accused/appellant has not disputed the fact of homicidal death of Rijhni Bai. Apart from that, PW-4 Dr. N.K. Dutta has stated that he conducted the postmortem on the body of	

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Rijhni Bai, there were 16 injuries all over the body, 3rd, 4th & 5th ribs were found fractured, right lung was also ruptured in the size of 2"x2". Similarly left lung was also ruptured. There was a fracture of skull bone and Rijhni Bai died on account of fracture of ribs and excessive haemorrhage, which resulted into shock. Therefore, in view of the above medical evidence it is established that death of Rijhni Bai was homicidal in nature. As far as involvement of the accused in crime in question is concerned, in this case there is no ocular evidence and the conviction rests on the circumstantial evidence i.e. 1. Accused made extra judicial confession before PW-8 Mehanguram 2. Body of Rijhni Bai was found in injured condition in the house of accused and the accused has not explained how the deceased sustained injuries. Moreover, accused came to PW-8 carrying his daughter in the lap after committing crime. As far as first circumstance is concerned, PW-8 Mehanguram has stated that in the fateful night, he was sleeping in his threshing field and in the mid night accused came to him and asked him to wake up and stated that he has committed murder of his wife. He was carrying his	

(पीछे देखिये)

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -S-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	daughter in the lap. Next day morning he went to the house of the accused, saw the dead body of Rijnhi Bai and gave merg intimation Ex.P-10. In the cross-examination this witness has stated that it is incorrect to say that in the fateful night accused Tekra Nagoshiya was sleeping with him in his threshing field. Learned counsel for the accused/appellant argued that in the FIR the time of incident has been shown has 5.00 a.m., whereas, PW-8 Mehanguaram has stated that in the mid night accused came and disclosed him that he has committed murder of his wife, therefore, there is variance in the time regarding commission of offence, as such the prosecution has not been able to establish the case against the accused with clear and cogent evidence. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have examined the evidence available on record. It is true that Mehanguaram has stated that in the mid night the accused came to him and disclosed that he has committed murder of his wife, whereas, merg intimation (Ex.P-10) given by Mehanguaram to the Police Station Balrampur shows that accused came to him about 5.00 a.m. and in the FIR (Ex.P-9) the time of occurrence has been shown prior to 5.00 a.m.	

(पीछे देखिये)

आदेश पत्रक

मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	From perusal of the above evidence and documents Ex.P-9 & Ex.P-10 i.e. merg intimation and FIR, it cannot be said that there is any material variance between the evidence of PW-8 Mehanguram and FIR & merg intimation. The incident took place in the night and there is no evidence that Mehanguram (PW-8) was wearing watch at that time and he mentioned the time only after seeing the time in his watch. Approximate time has been given and as per merg intimation, accused reached to Mehanguram (PW-8) at about 5.00 a.m. and it has no where come that how much time was taken by the accused to reach Mehanguram (PW-8) after commission of crime. Therefore, we do not find any substance in the argument advanced by learned counsel for the accused, as there is no substantial variance between the evidence and the documents regarding the time of commission of crime so as to make the prosecution case doubtful. Mehanguram (PW-8) is an independent witness and in his cross-examination the defence has not been able to elicit any circumstance which shows that this witness has any animosity against the accused or has any reason to implicate the accused in a false case. Moreover, he has stated that when the accused came to him, he was carrying his daughter in his lap and thereafter this witness informed PW-2 Goraram about the incident, who has corroborated the evidence of	

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आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Mehanguram (PW-8) and stated that Mehanguram came and informed him that Tekra has committed murder of his wife Rijnhi Bai, on which he went to the house of Tekra and saw that wife of Tekra namely Rijnhi Bai was lying dead and accused was present in the house. PW-5 Sukhram has also stated that in the night Mehangu came to his house and informed that Tekra has committed murder of his wife, on which he asked Mehangu to inform the villagers also. Next day morning along with villagers he went to the house of accused and saw that Rijnhi Bai, wife of accused, was lying dead, there were injuries on the head of Rijnhi Bai and accused was present in the house. Therefore, the evidence of Mehangu stands corroborated by the evidence of PW-2 Goararam & PW-5 Sukhram and there is nothing on record to show that extra judicial confession made by the accused was not voluntary. As such, the conclusion of the trial court that the accused made true and voluntary extra judicial confession before Mehanguram (PW-8) regarding commission of crime in question does not suffer from any illegality and infirmity. As far as second circumstance is concerned, as per evidence of PW-2 Goraram, on receiving information from Mehangu regarding commission of murder of Rijnhi Bai by the accused, he went to the house	

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आदेश पत्रक

मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	of the accused and saw that Rijnhi Bai was lying dead and accused Tekara was present in the house. PW-5 Sukhram has stated that coming to know about the murder of Rijnhi Bai by the accused, next day morning along with villagers he went to the house of the accused and saw that the wife of accused was lying dead, there was injury on the head of Rijnhi Bai and the accused was roaming in the house carrying his daughter in the lap. In the cross-examination of these two witnesses nothing has come on record to disbelieve their evidence and moreover, the accused in his statement under Section 313 of the Cr.P.C. has not explained that how Rijnhi Bai sustained injuries which resulted into the death of Rijnhi Bai. The accused in his statement under Section 313 of Cr.P.C. simply denied the prosecution evidence and stated that he has been falsely implicated in the crime, but for implication in a false case no reason has been assigned by the accused or it has not been stated that the prosecution witnesses namely PW-8 Mehanguram, PW-2 Goraram & PW-5 Sukhram had any grudge or animosity so as to implicate the accused in a false case. Accused has not even stated that when in the night the crime in question was committed he was not at his residence. Therefore, all these circumstances and conduct of the accused are	

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आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	suggestive of the fact that the accused was the author of crime in question. As such, based on the extra judicial confession made by the accused before PW-8 Mehanguram and the fact that dead body of Rijnhi Bai was seen by PW-2 Goraram & PW-5 Sukhram in injured condition in the residence of the accused, accused was present in the house at that time and no explanation has been offered by the accused regarding the cause of death of Rijnhi Bai, the cumulative effect of the above circumstantial evidence is that the accused was the author of the crime in question. Through the above circumstantial evidence the only irresistible conclusion can be drawn that accused was the author of the crime and there is no possibility of committing the crime in question by anybody else. In the result, we do not find any illegality or infirmity in the judgment of the trial court, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. Sd/- L.C.BHADOO Judge	Sd/- V.K. Shrivatava Judge
Roshan/-		

(पीछे देखिये)

3/11/2008
10/11/2008